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No. 05-642

In The
Supreme Court of the United States

JIM FLYNN, MARY COMER,
AND LEON MOONEYHAN,

Petitioners,

v.

LYNN MEERS, AS GUARDIAN FOR
LESLIE MEERS; AND JOEY ROGERS,

Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeals Of Kentucky

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether students with identified disabilities seeking relief for conduct that could have been addressed to any degree by the administrative procedures available under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415 *et seq.*, may avoid exhaustion of such procedures by filing an action in a court of general jurisdiction raising federal and State civil rights claims and State law tort claims as non-educational injuries against school administrators in only their individual capacity?

PARTIES TO THE PROCEEDING

The Petitioners are Jim Flynn, Mary Comer, and Dr. Leon Mooneyhan, each in their individual capacity.[1] The Respondents are Lynn Meers, as Guardian for Leslie Meers, and Joey Rogers.

RULE 29.6 STATEMENT

Petitioners have no parent corporation and no publicly held company owns 10% or more of its stock.

[1] Another party, Debbie Medley, was a Defendant in the trial court action and has filed a separate Petition for Writ of Certiorari in this matter.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Petitioners, Jim Flynn, Mary Comer, and Dr. Leon Mooneyhan, respectfully petition this Court for a writ of certiorari to review the October 29, 2004, Opinion of the Court of Appeals of Kentucky[2] reversing the decisions of the Shelby Circuit Court entered April 25, 2003, which had dismissed with prejudice the Complaints for failure to exhaust administrative remedies under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq*.

OPINIONS BELOW

The Opinion of the Court of Appeals of Kentucky entered October 29, 2004, reversing and remanding, is officially reported as *Meers v. Medley*, 168 S.W.3d 406 (Ky.App. 2004) (hereinafter referred to as "*Meers*"). (App. p. 1.) The Court of Appeals also entered on December 22, 2004, an Order Denying Petition for Rehearing, which is unreported. (App. p. 12.)

The Order of the Shelby Circuit Court entered April 25, 2003, dismissing the action filed by Respondent Meers is unreported. (App. p. 14.)

The Order of the Shelby Circuit Court entered April 25, 2003, dismissing the action filed by Respondent Rogers, is likewise unreported. (App. p. 15.)

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[2] Pursuant to a Prehearing Conference Order entered August 29, 2003, the Court of Appeals of Kentucky consolidated the separate appeals filed by the Respondents herein from the Shelby Circuit Court's respective orders of dismissal. (App. p. 10.)

The Order of the Supreme Court of Kentucky entered on August 17, 2005, denying the Motion for Discretionary Review is unreported. (App. p. 16.)

JURISDICTION

The Opinion of the Court of Appeals of Kentucky was entered on October 29, 2004, and a timely Petition for Rehearing was denied by that court on December 22, 2004. (App. pp. 1, 12.) A timely Motion for Discretionary Review to the Supreme Court of Kentucky was likewise denied by Order entered August 17, 2005. (App. p. 16.) This Court, therefore, has jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL STATUTE INVOLVED

The provisions of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400 *et seq.* (West 2000) at issue in this matter are § 1415(i)(2)(A) and § 1415(l) and are set forth respectively below:[3]

§ 1415. Procedural safeguards

. . . .

(i) Administrative procedures

. . . .

[3] Congress further amended the IDEA in Public Law 108-446, the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), with no substantive changes to the provisions in issue as presented in this Petition for Writ of Certiorari.

(2) Right to bring civil action

(A) In general

Any party aggrieved by the findings and decision made under subsection (f) or (k) of this section who does not have the right to an appeal under subsection (g) of this section, and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

. . . .

(l) Rule of construction

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 *et seq.*], title V of the Rehabilitation Act of 1973 [29 U.S.C.A § 791 *et seq.*], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

STATEMENT OF THE CASE

Respondents, Lynn Meers, guardian of Leslie Meers, and Joey Rogers (hereinafter for convenience "the Students"), filed separate Complaints in the Shelby Circuit Court against the Petitioners (hereinafter for convenience "School District Administrators") and teacher, Debbie Medley. At all times pertinent to the claims arising herein, Petitioner Jim Flynn served as the Principal of the Shelby County High School, Petitioner Mary Comer served as the Special Education Coordinator, and Petitioner Dr. Leon Mooneyhan served as the Superintendent of the Shelby County Public Schools. The Shelby County Public Schools (Board of Education of Shelby County), as a body politic and corporate, was not made a party defendant in the trial court actions. The School District Administrators were sued only in their respective individual capacities.

The Students initiated suit against the School District Administrators under the Eighth and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983, the State's civil rights act, and the state law torts of intentional infliction of emotional distress, assault, battery, negligence, and defamation. The respective separate Complaints of the Students mirrored each other with allegations of intrusions to body integrity, negligent and/or intentional abuse in the context of a public school and as prohibited by school policy, assault, battery, and defamation. The Students further alleged the School District Administrators were negligent with respect to the monitoring and supervision of the instructional services being provided to them by teacher Medley in the classroom setting and complained of an unstable classroom environment.